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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~330~~ 129

JAMES SYKES, PLAINTIFF IN ERROR,

vs.

ELEANOR M. CHADWICK.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 20, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 336.

JAMES SYKES, PLAINTIFF IN ERROR,

vs.

ELEANOR M. CHADWICK.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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2 The answer of the chief justice and justices of the supreme court of the District of Columbia, within named.

The record and proceedings whereof mention is within made, follow in these words, to wit:

Declaration.

In the supreme court of the District of Columbia, July 11, 1870.

ELEANOR M. CHADWICK
v.
JAMES SYKES. } At law. No. 7232.

The plaintiff sues the defendant, for that the defendant and H. A. Chadwick, then and now the husband of the plaintiff, on the 15 day of Oct., 1869, in said District, made and delivered to the plaintiff a promissory note for the sum of $5,000, payable six months after same date at the office of Willards' Hotel, which period has elapsed, in consideration whereof the said Sykes promised to pay the plaintiff said sum of
3 five thousand dollars, according to the tenor and effect of said note, which he refused to do, to her damage $6,000.

And also for that the defendant is indebted to the plaintiff in the sum of $5,000, on a certain other promissory note made and delivered to the plaintiff, on the 15th of Oct., 1869, at said District, for said sum, due six months after said date by the defendant, which he promised to pay, but which he neglected to do, to her damage $6,000, for which she sues.

And also for that the defendant is indebted to the pl'ft, in the sum of $5,000, for money had and received by him for her use, to be paid on demand, and which on demand he refused to pay, to her damage $6,000.

A. G. RIDDLE,
F. MILLER,
For Pl'ff.

Copy of note.

$5,000.] WASHINGTON, *Oct.* 15, 1869.

Six months after date, we promise to pay to the order Eleanor M. Chadwick, five thousand dollars, value received.

Payable at Willards' Hotel office.

JAMES SYKES.
H. A. CHADWICK.

4 The defendant will plead on or before the 1st day of the special term occurring twenty days after service.

RIDDLE & M.

Summons.

In the supreme court of the District of Columbia, the 12th day of July, 1870.

ELEANOR M. CHADWICK, PLAINTIFF,
v.
JAMES SYKES, DEFENDANT. } At law. No. 7232.

The President of the United States, to the defendant, greeting:

You are hereby commanded to appear in this court, on the first day of its special term, occurring twenty days after service of this writ on

you, to answer the plaintiff's suit, and show why she should not have judgment against you, for the cause of action stated in his declaration.

Witness D. K. Cartter chief justice.

[SEAL OF COURT.] R. J. MEIGS, *Clerk.*

RIDDLE.

NOTE.—The special terms of the court commence on the first
5 Tuesday of every month, except May, in which month they commence on the third Monday, and August, in which month there is no term of the court.

(On back:)

Served copies of the declaration, notice to plead and this summons, on the defendant, the 15th day of July, 1870.

A. SHARP, *Marshal.*

Demurrer.—Filed Sept. 5, 1870.

In the supreme court of the District of Columbia, the 5th day of September, 1870.

ELEANOR M. CHADWICK, PL'FF, *v.* JAMES SYKES, DEFENDANT. } At law. No. 7232.

The defendant says that the declaration is bad in substance.

R. T. MERRICK,
Attorney for Defendant.

The plaintiff was a married woman at the time of the execution of the pretended promissory notes in the declaration mentioned, and at the time of bringing this suit, and could not make any valid contract,
6 neither can she sue without joining her husband.

Pleas.—Filed Sept. 5, 1870.

In the supreme court of the District of Columbia, the 5th day of September, 1870.

ELEANOR M. CHADWICK, PL'FF, *v.* JAMES SYKES, DEFENDANT. } At law, No. 7232.

1. As to the second and third counts the defendant says, that he never promised, as alleged.

2. And as to the said counts, for a second plea, the defendant says that he was never indebted as alleged.

3. And for a further plea to the said second count of the plaintiff's declaration, the defendant says that, if he is liable at all for the plaintiff's demand, he is liable jointly with H. A. Chadwick, and the plaintiff has failed to join the said H. A. Chadwick, in her suit, as co-defendant.

4. And for a further plea, to said second and third counts, the defendant says that, at the time of bringing this suit, and up to this present time, the plaintiff was and continues to be a married wo-
7 man, the wife of one H. A. Chadwick, and the said H. A. Chadwick, her husband, should be joined with her in said suit.

5. And for a further plea, to the said second count of the plaintiff's declaration, the defendant says that the said alleged promissory note was executed without any good and valid consideration therefor.

6. And for a further plea to the said second count of the plaintiff's declaration, the defendant says that the plaintiff was a married woman at the time of the alleged execution of the said promissory notes in said declaration set forth, and incapable of entering into any contract, and the said pretended promissory notes are therefore null and void, and of no binding effect.

7. And for a further plea, to the said second count of the plaintiff's declaration, the defendant says, that the said pretended promissory note was never duly presented for payment.

R. T. MERRICK,
Attorney for Defendant.

Joinder in demurrer & replication.—Filed Sept. 6, 1871.

In the supreme court of the District of Columbia.

ELEANOR M. CHADWICK
v.
8 JAMES SYKES. } At law. No. 7232.

And now comes the plaintiff and joins in the defendant's demurrer to the first count of the plaintiff's declaration.

And as to the 1st, 2nd, 3rd, 5th, & 7th pleas the pl'ff takes issue upon each of them.

And, as to the 4th and sixth of said pleas, she says that said note refer'ed to was executed to her for her seperate property in said District of Columbia, then and now her domicil.

A. G. RIDDLE, *for Pl'ff.*

Proceedings of court.

Proceedings before the supreme court of the District of Columbia, holding a circuit court and special term for said district, commencing the third Monday (23rd day) of January, 1871.

MONDAY, *January* 23, 1871.

The court commences its session by proclamation of the marshal, by order of Chief Justice Cartter, presiding.

9 SATURDAY, *March* 18, 1871.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

ELEANOR M. CHADWICK, PL'FF,
v.
JAMES SYKES, DEFENDANT. } At law. No. 7232.

Upon argument of the defendant's demurrer to plaintiff's declaration, and being fully advised therein, it is considered that the same be and is hereby overruled.

Pleas, joinder, &c.—Filed June 13, 1871.

ELEANOR M. CHADWICK
v.
JAMES SYKES. } At law. No. 7232.

And said defendant, for pleas to the first count of plaintiff's declaration, says—

1st. That he did not undertake and promise as alleged.

2d. That said alleged promissory note was executed without any good and valid consideration.

MERRICK, *for Def't.*

10 And said plaintiff joins issue upon said 1st and 2nd pleas, to said first count.

RIDDLE, *for Pl'ff.*

And upon plaintiff's replication to the 4th and 6th pleas aforesaid, the defendant joins issue.

MERRICK, *for Def't.*

Proceedings of court.

Proceedings before the supreme court of the District of Columbia, holding a circuit court and special term for said District, commencing the second Monday (8th day) of May, 1871.

MONDAY, *May* 8, 1871.

The court commenced its session by proclamation of the marshal, by order of Justice Wylie, presiding.

TUESDAY, *June* 13, 1871.

Session resumed pursuant to adjournment, Wylie, justice, presiding.

ELEANOR M. CHADWICK, PL'FF,
v.
11 JAMES SYKES, DEFENDANT. } At law. No. 7232.

And now come, as well the plaintiff, by her attorney, Mr. Riddle, as the defendant, by his attorney, Mr. Merrick, and a jury, of good and lawful men of this District, to wit, Thomas Orme, Alexander Shaw, John N. Trook, Decius W. Edmonston, George D. Taff, Basil M. Burroughs, William R. Fowler, Jedediah Gettings, Stephen T. Tune, William H. Wheeler, Walter A. Nicholson, & James Mankin, who, being sworn to try the issue above joined, on their oath, say they find the same in favor of the plaintiff, and that the money payable to her by the defendant, by reason of the premises, is the sum of five thousand dollars, with interest thereon from April 15, 1871, besides costs. Therefore, it is considered that the plaintiff recover against the defendant five thousand dollars, with interest as aforesaid found, and $36.30 costs of suit, and have execution thereof.

And thereupon defendant gives notice of motion for a new trial.

WEDNESDAY, *June* 14, 1871.

Session resumed pursuant to adjournment, Wylie, justice, presiding.

12 ELEANOR M. CHADWICK, PL'FF,
v.
JAMES SYKES, DEFENDANT. } At law. No. 7232.

And now again comes the defendant, by his said attorney, and moves the court to set aside the verdict, and for a new trial,

1st. Because of the insufficiency of the evidence;
2nd. Because of the misdirection of the judge;
3rd. Because the verdict is contrary to law;
4th. For excessive damages.

FRIDAY, *June* 20, 1871.

Session resumed pursuant to adjournment, Wylie, justice, presiding.

ELEANOR M. CHADWICK, PL'FF,
v.
JAMES SYKES, DEFENDANT. } At law. No. 7232.

And now comes the defendant, by his said attorney, and files his four bills of exception to the ruling of the court, on the trial of this cause, duly signed and sealed by the court, and prays that they may be made a part of the record, which is accordingly done.

13 *Bills of exception.*

In the supreme court of the District of Columbia.

ELEANOR M. CHADWICK,
v.
JAMES SYKES. } At law. No. 7232.

On the trial of this cause, the plaintiff, to maintain the issues on her part joined, testified in person, that the note sued on was signed by the defendant and her husband, H. A. Chadwick, on the day of its date, and delivered to her; that the consideration of said note, was her signing the deed conveying her dower-interest in certain real estate, belonging to said defendant and her husband, and which they had sold to the Freedman's Saving and Trust Company, and that she joined them in the conveyance to said co'. Plaintiff then read in evidence the following deed:

14 James Sykes et al., to Freedman's Savings & Trust Company. Deed. Recorded October 15, 1869, 3.20 p. m.

This indenture, made this thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, between James Sykes and Henry A. Chadwick and Eleanor M. Chadwick, his wife, of Washington City, District of Columbia, parties of the first part, and the "Freedman's Savings and Trust Company," incorporated by an act of Congress, approved March 3d, 1865, party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of eighty thousand dollars, ($80,000,) in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do, by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, its suc'essors and assigns forever, the following-described real estate, situate in the City of Washington, Dis-
15 trict of Columbia, to wit: The west half of lot number three, (3,) all of lots numbered four, (4,) five, (5,) six, (6,) seven, (7,) and the

south half of lot number eight, (8,) twenty-five feet front by depth of said lot eight; all in square numbered two hundred and twenty-one, (221,) as laid out and recorded on the original plat or plan of said city of Washington, D. C., together with all improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise, however, of the said parties of the first part, of, in, to, or out of, the said pieces or parcels of ground and premises: To have and to hold the said pieces or parcels of ground and premises, and appurtenances, unto the said party of the second part, its successors and assigns, to its sole use, benefit, and behoof forever.

And the said James Sykes and Henry A. Chadwick, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and agree, to and with the said party of the second part, its successors and assigns, that they, the said parties of the first part and their heirs, shall and will warrant and forever defend
16 the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part, its successors and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof; and further, that they, the said parties of the first part, and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, its successors, or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain, and effectual conveyance of the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part, its successors, or assigns, as the said party of the second part, its successors, or assigns, or its counsel learned in the law shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JAMES SYKES. [SEAL.]
H. A. CHADWICK. [SEAL.]
ELEANOR M. CHADWICK. [SEAL.]

Signed, sealed, and delivered in the presence of—
THO'S J. MEYERS.

DISTRICT OF COLUMBIA,
County of Washington, ss:

17 I, Thomas J. Meyers, a notary public in and for the county aforesaid, in the said District, do hereby certify that James Sykes, Henry A. Chadwick and Eleanor M. Chadwick, his wife, parties to a certain deed bearing date on the thirteenth day of October, A. D. 1869, and hereto annexed, personally appeared before me in the county aforesaid, the said James Sykes, Henry A. Chadwick and Eleanor M. Chadwick, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Eleanor M. Chadwick, wife of said Henry A. Chadwick, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared

that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this thirteenth day of October, A D. 1869.

[NOTARIAL SEAL.] THO'S J. MEYERS,
Notary Public.

18 (Indorsed:) $1.75.

This is to certify that the within is a true and verified copy of a deed, as recorded in Liber D 14, fol. 211, et seq., one of the land records of this office.

Washington, D. C., Jan'y 15, '72.

[SEAL.] S. WOLF, *Recorder.*
GEO. F. SCHAYER, *Dep.*

19 And thereupon offered the said note in evidence, to which the defendant by his counsel objected, which objection the court overruled and admitted said note in evidence, to which the defendant excepted, and now prays the court to sign and seal this, his first bill of exceptions, which is accordingly done this 13th day of June, 1871.

ANDREW WYLIE. [SEAL.]

2nd bill of exceptions.

And thereupon the defendant, to maintain the issue on his part joined, offered in evidence the following deed of trust:

20 James Sykes & wife, Henry A. Chadwick & wife, to Anthony Hyde & Daniel W. Middleton, jr. Trust. Recorded August 25th, 1868, 1.20. p. m.

This indenture, made this thirteenth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, between James Sykes and Martha S., his wife, and Henry A. Chadwick and Eleanor M., his wife, all of Washington City, and District of Columbia, of the first part, and Anthony Hyde and Daniel W. Middleton, jr., of the county of Washington, in said District, of the second part, witnesseth: Whereas Sykes, Chadwick & Company, of Washington City, are indebted to Riggs & Company, bankers of said city, in the just and full sum of forty-five thousand dollars, for which amount said Sykes, Chadwick & Company have passed to said Riggs & Company their promissory note, bearing even date with these presents, and payable to the order of said Riggs & Company, six months after date, with interest thereon from date;

21 And whereas the said parties of the first being desirous to secure the full and punctual payment of said note and all interest, costs, and expenses that may accrue thereon, according to the true intent and meaning thereof, have agreed to execute these presents: Now, therefore, this indenture witnesseth. That the said parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, at and before the ensealing and delivery of these presents, the receipt whereof they do and each of them doth hereby acknowledge, have granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these presents do grant, bargain, and sell, alien, enfeoff, convey, and

confirm unto them, the said parties hereto of the second part, and the survivor of them, and the heirs and assigns of such survivor, all those pieces or parcels of ground and premises lying and situate in said city of Washington, and known and described on the ground-plat of said city, as west half part of lot number three, (3,) fronting on Pennsylvania avenue, or President's square, twenty-six feet six inches, (26 f't 6 in.,) and running back of that width one hundred and eleven feet, (111,) to an alley; the whole of lot number four, (4;) the whole of lot number five, (5;) the whole of lot number six, (6;) the whole of lot number seven, (7;) and the south part of lot number (8,) fronting on Madi-
22 son place twenty-five feet three inches, (25 f't 3 in.,) and running back of that width to an alley; all of said lots and parts of lots being in square numbered two hundred and twenty-one, (221,) being and intended to be the same lots of ground conveyed to Lafayette Maynard by Hellen M. Gunnell, by deed, dated the sixth day of July, eighteen hundred and fifty-four, and by s'd Maynard and wife, on the twenty-sixth day of February, eighteen hundred & sixty-seven, to the said James Sykes and Henry A. Chadwick, all duly executed and recorded, together with the improvements, privileges, hereditaments, and appurtenances, to the same belonging or in any manner appertaining: To have and to hold the same unto and to the use of the said parties of the second part and the survivor of them, his heirs, and assigns forever. In trust, nevertheless, for the uses and purposes following and none other, that is to say: To suffer and permit the s'd parties of the first part, their heirs, and assigns, to have, hold, use, occupy, possess, and enjoy the said premises with the improvements, et cetera, as aforesaid, and the rents, issues, and profits thereof to take, receive, and apply to their own use, until some default or failure shall have been made in the payment of said debt, according to the terms thereof
23 hereinbefore stated, to the said Riggs and Company, their assigns, or other legal representatives, or in any part thereof, or of any proper interest, costs, and charges thereon, or which may accrue thereon; and upon any and every such default or failure being made in the payment, as aforesaid, the said parties of the second part and the survivor of them, shall, at the *at the* request in writing of the said Riggs & Company, their assigns, or other legal representatives, proceed to sell and dispose of said premises as hereinbefore described, or so much thereof as said trustees or the survivor may deem necessary, at public sale to the highest bidder, upon such terms and conditions as the said trustees or the survivor may deem most for the interest of all parties concerned in said sale; first giving at least thirty days' notice of the time, place, and terms of said sale, by advertisement in one or more newspapers, printed and published in the city of Washington; and such sale to repeat or postpone, from time to time, as the said parties of the second part and the survivor of them may deem expedient; and out of the proceeds, arising from such sale or sales, after paying the proper expenses thereof, and other expenses of this trust, including a per
24 centum, according to the rule in chancery sales, in the county of Washington, on the gross amount of said sale or sales, as compensation to the said trustees or the survivor, for their trouble and diligence in executing this trust, to pay, in the first place, whatever of said debt, interest, costs, and expenses may be due and unpaid at the time of such sale or sales, and the surplus, if any, to pay over to the said Sykes, Chadwick & Company, or their legal representatives; and in the event of any such sale or sales under the provisions of this trust, to convey to the purchaser or purchasers all the right, title, and estate,

legal and equitable, of the said parties of the first in and to the premises sold; and on any sale being hereafter made under the provisions of this trust and the terms thereof being complied with to the satisfaction of the said trustees or trustee so selling, the said parties of the first part, shall surrender to the purchaser or purchasers his, her, or their proper representatives, the full and peaceable possession of the premises sold.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, hereby covenant and agree with the said parties of the second part, and the survivor of them, to insure
25 and constantly, during the continance of this trust, to keep insured, in some insurance office or offices of good credit and standing, the buildings on the premises and lots hereby conveyed in trust, to an amount not less than five thousand dollars; and on failure or neglect to do, it shall and may be lawful for, but shall not be obligatory upon said Riggs & Company, to procure such insurance to be made against loss or damages by fire, and the cost thereof shall thereupon become a debt due and owing by the said Sykes, Chadwick & Company, the payment of which shall be secured in all respects equally by this trust, as if the same had constituted a part of the original debt intended thereby to be secured.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

JAMES SYKES.	[SEAL.]
MARTHA S. SYKES.	[SEAL.]
H. A. CHADWICK.	[SEAL.]
ELEANOR M. CHADWICK.	[SEAL.]

Signed, sealed, and delivered in our presence, ($45 U. S. internal-revenue stamps being first attached) as to Martha S. Sykes—

JOHN B. O'DONNELL, *J. P.*
GEO. MCCAFFREY, *J. P.*
N. CALLAN, as to James Sykes and H. A. Chadwick. Witness to Eleanor M. Chadwick—
THO'S HYDE.
W'M C. HILL.

Rev. stamps, $45.]

26 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, N. Callan, notary public in and for said county, do hereby certify that James Sykes and Henry A. Chadwick, parties to a certain deed, bearing date on the thirteenth day of August, A. D. eighteen hundred and sixty-eight, and hereto annexed, personally appeared before me, in my county aforesaid, the said James Sykes and Henry A. Chadwick, being personally well known to me as the parties who executed the said deed and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this seventeenth day of August, A. D. eighteen hundred and sixty-eight.

[Seal affixed.]

N. CALLAN,
Notary Public.

STATE OF MARYLAND,
Baltimore City, to wit:

We, John R. O'Donnell & George McCaffrey, two justices of the peace of the State of Maryland, in and for Baltimore City aforesaid, do

hereby certify that Martha S. Sykes, the wife of the said James Sykes, party to a certain deed, bearing date the thirteenth day of Au-
27 gust, A. D. eighteen hundred and sixty eight, and hereto annexed, personally appeared before us, in our city and State aforesaid, the said Martha S. Sykes, being well-known to us as the person who executed the said deed, and being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Martha S. Sykes, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands this fifteenth day of August, A. D. eighteen hundred and *fifty*-eight.

JOHN R. O'DONNELL, *J. P.*
GEO. McCAFFREY, *J. P.*

STATE OF MARYLAND,
Baltimore City, sct:

I hereby certify that John R. O'Donnell & Geo. McCaffrey, esquire', before whom the annexed acknowledgment was made, and who has thereto subscribed their names, were, at the time of so doing, justices of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal
28 of the superior court of Baltimore City, this 15th day of Aug't, A. D. 1868.

[Court seal affixed.] GEORGE ROBINSON,
Clerk of the Superior Court of Baltimore City.

[Rev. stamp, 5 c.]

STATE OF PENNSYLVANIA,
County of Philadelphia, to wit:

We, John White and J. P. Delaney, esq's, two of the aldermen in and for , do hereby certify that Eleanor M. Chadwick, the wife of the said Henry A. Chadwick, party to a certain deed, bearing date the thirteenth day of August, A. D. eighteen hundred and sixty-eight, and hereto annexed, personally appeared before us in *my* own county aforesaid, the said Eleanor M. Chadwick, being well-known to us as the person who executed the said deed, and being examined by us privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Eleanor M. Chadwick, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands & seals this nineteenth day of August, A. D. eighteen hundred and sixty-eight.

JOHN WHITE, *Alderman.* [SEAL.]
J. P. DELANEY, *Alderman.* [SEAL.]

29 EASTERN DISTRICT OF PENNSYLVANIA,
City and County of Philadelphia, ss:

I, James Ross Snowden, prothonotary of the supreme court of Pennsylvania, in and for the eastern district, do certify that J. P. Delaney and John White, esq's, before whom the annexed acknowledgment was made, was at the time the same was made, and now is, an alderman and ex-officio a justice of the peace of the city and county of Philadelphia, duly commissioned and qualified to administer oaths and affirmations

and to take acknowledgments, &c.; to all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my and affixed the seal of said court, at Philadelphia, this 19th day of August, A. D. 1868.

[Court seal affixed.] JAMES ROSS SNOWDEN,
Prothonotary.

30 (Indorsed:) $3.54.

This is to certify that the within is a true and verified copy of a deed, as recorded in liber 565, fol. 360, et seq., one of the land records of this office.

Washington, D. C., Jan'y 15, 1872.

[SEAL.] S. WOLF, *Recorder.*
GEO. F. SCHAYER, *Dep.*

31 To show that said plaintiff had previously parted with her dower-right in said property, to which the plaintiff, by her counsel objected, which objection was sustained by the court, and permission to read said deed in evidence refused; to which refusal the defendant, by his counsel, excepted, and prays the court to sign and seal this his 2d bill of exceptions, which is accordingly done, this 13th day of June, 1871.

ANDREW WYLIE. [SEAL.]

32 *3rd bill of exceptions.*

The defendant thereupon rested, and requested the court to instruct the jury as follows:

1st. If the jury find from the evidence that the note sued on in this case, was made by Sykes and Chadwick, payable to Mrs. Chadwick, and that Mrs. Chadwick was the wife of one of the makers of the note, and that the consideration of the note was not the seperate and individual property of Mrs. Chadwick, then the plaintiff is not entitled to recover.

2nd. If the jury find from the evidence that the note sued on in this case was a note made by one of the makers, who was at that time the husband of the payee, and that the consideration of the said note was that the payee should sign the deed offered in evidence by the plaintiff, and that the payee had no other interest in the property conveyed in that deed than a dower-right contingent, or arising from her husband's death, then the said note is void for want of consideration, and the plaintiff cannot recover, which the court refused; and to the refusal to grant each of said prayers the defendant, by his counsel, excepted, and prays the court to sign seal this his 3d bill of exception, which is accordingly done, this 13th day of June, 1871.

ANDREW WYLIE. [SEAL.]

33 *4th bill of exceptions.*

And thereupon the court charged the jury as follows:

GENTLEMEN: There are some cases in which the labor is thrown upon the jury, but in this case the jury have but little to do. The only difficulty in the case has arisen on the questions of law, and these have been determined by the court. Nothing remains but for you to render a verdict for the plaintiff for the amount sued for, with the amount of interest due from the time of the maturity of the note.

To which the defendant, by his counsel, excepted, and prays the court to sign and seal this his 4th bill of exceptions, which is accordingly done, this 13th day of June, 1871.

ANDREW WYLIE. [SEAL.]

Proceedings in general term.

Proceedings before the supreme court of the District of Columbia, in general term, commencing Monday, September 25, 1871:

MONDAY, *September* 25, 1871.

34 By order of the justices present, to wit, Chief Justice Cartter, and Justices Olin, Wylie & MacArthur, the marshal proclaims the opening of the court.

FRIDAY, *October* 13, 1871.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Wylie, Humphreys, and MacArthur.

ELEANOR M. CHADWICK, P'L'FF,
v.
JAMES SYKES, DEFENDANT. } At law. No. 7232.

And now come, as well the plaintiff, by her attorney, Mr. Francis Miller, as the defendant, by his attorney, Mr. Merrick; and thereupon, because it seems to the court that there is no error either in the proceedings of the circuit court or in its judgment in this cause: Therefore, it is considered that the said judgment be, and the same is hereby, affirmed; and that the plaintiff recover against the defendant the costs of the cause in this court, and have execution thereof, and of the judgment hereby affirmed.

35 In the supreme court of the District of Columbia, the 25th day of October, 1871.

ELEANOR M. CHADWICK
vs.
JAMES SYKES. } At law. No. . In error.

Know all men by these presents that we, James Sykes and Samuel W. Owen, are bound unto the above-named Eleanor M. Chadwick, in the sum of ten thousand dollars, to be paid to the said Eleanor M. Chadwick, her executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 25th day of October, 1871.

Whereas the above-named James Sykes hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named James Sykes shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then

this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES SYKES. [SEAL.]
S. W. OWEN. [SEAL.]

Sealed and delivered in presence of—
JOHN C. WILSON.

Approved Oct. 25, 1871.

D. K. CARTTER,
Chief Justice.

36 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said court before you, between Eleanor M. Chadwick, plaintiff, and James Sykes, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this 20 day of October, in the year of our Lord 1871, and of the Independence of the United States the 96th.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

TO ELEANOR M. CHADWICK:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein James Sykes is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Chief Justice.

Service of writ of error and citation acknowledged, Oct. 20, 1871.
A. G. RIDDLE, *for Pl'ff.*

(Indorsed:) 7232. Law. Chadwick vs. Sykes. Writ of error and citation.

37 OFFICE OF THE CLERK OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA,
January 2nd, A. D. 1872.

I certify that the foregoing is truly copied from originals on file, and of record in this office; which originals, together, constitute the record and proceedings of the said supreme court of the District of Columbia, in the case mentioned in the writ of error to which this certificate is annexed.

Witness my hand and the seal of said court the day and year aforesaid.

[SEAL.]

R. J. MEIGS,
Clerk S. C. D. C.
By J. JAY CAMP,
Ass't Clerk.

(Indorsement on cover:) No. 336. James Sykes, plaintiff in error, vs. Eleanor M. Chadwick. Dist. of Columbia sup. court. Filed 20th January, 1872.

Supreme Court of the United States.

OCTOBER TERM.—1873.

JAMES SYKES, *Plaintiff in Error*,
v.
ELEANOR M. CHADWICK.
No. 129.

BRIEF OF PLAINTIFF IN ERROR.

Suit was brought in the court below by Eleanor M. Chadwick, defendant in error, against James Sykes, plaintiff in error, on a promissory note reading as follows:

$5,000. WASHINGTON, *October* 15, 1869,

Six months after date we promise to pay to the order of Eleanor M. Chadwick, five thousand dollars, value received.

JAMES SYKES,
H. A. CHADWICK.

H. A. Chadwick, one of the makers of the note, was the husband of the payee, the plaintiff below.

The consideration of the note was Mrs. Chadwick's uniting with the makers thereof in a conveyance of certain real estate belonging to them so as to pass her right of dower.

It is claimed by the plaintiff in error that Mrs. Chadwick, being a married woman, was incapable of contracting, and that the note was therefore void: that she had no right of dower in the real estate conveyed, and that the note was void for want of consideration; and that the transaction did not come within the purview of the act of Congress, passed April 10, 1869, regulating the rights of property of married women in the District of Columbia. These questions are all raised by the bills of exception in the record.

The act referred to is as follows:

"An act regulating the rights of property of married "women in the District of Columbia."

* * * * * * That in the District of Columbia the right of any married woman to any property, personal or real, belonging to her at the time of marriage, or acquired during marriage, in any other way than by gift or conveyance from her husband, shall be as absolute as if she were feme sole, and shall not be subject to the disposal of her husband or liable for his debts; but such married woman may convey, devise and bequeath the same or any interest therein in the same manner and with like effect as if she were unmarried.

Sec. 2. That any married woman may contract and sue and be sued in her own name in all matters having relation to her sole and separate property in the same manner as if she were unmarried; but neither her husband nor his property shall be bound by any such contract, nor liable for any recovery against her in any such suit, but judgment may be enforced by execution against her sole and separate estate in the same manner as if she were sole.

ASSIGNMENT OF ERROR.

1st. The admission of said note in evidence.

It was void, because the plaintiff was unable to contract.

It was absolutely void as to her husband, and being a joint note, was therefore void as to the defendant below.

The contract was one having no relation whatever to her sole and separate estate.

2d. The court below erred in refusing to admit in evidence the deed of trust, set out on page 7, of the record, inasmuch as it would have shown that Mrs. Chadwick united in it, and had thereby, prior to the date of the note conveyed her right of dower to the Trustees named in the deed, and that there was, therefore, no consideration for the note.

3d. The refusal to grant the defendant's two prayers, set out in page 11, of the record. The first prayer presents the question, that if the consideration of the note was not the separate and individual property of the plaintiff, then she was not entitled to recover.

The point presented by the second prayer is, that if the only consideration of the note was the plaintiff's inchoate right of dower, then it was void for want of consideration.

BRIEF OF ARGUMENT.

1st. There was no consideration for the note.

The deed of trust, which the court refused to admit in evidence (2d bill of exceptions, Record, page 11,) was executed by Mrs. Chadwick, and passed her right of dower.

A widow in this District has no dower in an equity of redemption.

12 Pet., 201, Stelle v. Carroll.

The contract was for the plaintiff's right of dower, and she had none. It will not do therefore, to allege

that her mere execution of the deed was a sufficient consideration for the note.

2d. Even if she had a right of dower in the real estate, it was not her sole and separate property within the meaning of the law.

The right of dower is not an estate in lands.

Parke on dower, 335, 342.
3 Cr. C. C., 394, Blodgate v. Brent.
17 John., 167, Jackson v. Vanderheyden.

If the contrary view is held to be law, then every married woman, whose husband happens to own real estate, has a sole and separate property, with reference to which she may contract.

3d. The note was a joint note, and being void, as to her husband, one of the makers, the plaintiff was not entitled to recover.

4 Allen, 412, Ingham v. White.
7 do. 176, Turner v. Nye et al.
10 Cush., 550, Jackson v. Parks' Ex'tr.
3 Allen, 315, Edwards v. Stevens et al.

This was a suit against partners, of whom the plaintiff's husband was one, for services rendered the firm.

The court decided that "as the plaintiff could not con-"tract with her husband, she could not contract with the "other defendants jointly with him."

4th. This case, in no view of it, comes within the letter or spirit of the act of Congress. Mrs. Chadwick has no separate property, and therefore could not make any contract as to it.

The note itself could not be her separate estate, under the law, for the note is merely the evidence of the contract, which she was incapable of making.

If the note is regarded as a gift, then it could not be enforced against the donor.

1 Par. on Bills and Notes, 191.

1 Par. on Contracts, 226, bottom paging.

42 N. H., 381, Ames v. Foster

In this case the note of a married woman for borrowed money with which to purchase a separate estate was held void, although the estate was purchased; the court holding that the acts as to married women do not authorize them to contract generally.

38 Pa., 146 Ramburger's adm'r v. Ingraham.

In this case a judgment bond of a married woman for land conveyed to her was held invalid as a personal obligation.

18 N. Y., 4 Smi., 272 Yale v. Dederer.

14 Ind., 415, Johnson v. Chissern.

WM. F. MATTINGLY,
R. T. MERRICK,
Attys. for Plff. in Error.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 129.

JAMES SYKES, PLAINTIFF IN ERROR,

vs.

ELEANOR M. CHADWICK.

In Error to the Supreme Court of the District of Columbia.

A. G. RIDDLE,
C. M. HAWLEY,
FRANCIS MILLER,
For Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 129.

JAMES SYKES, PLAINTIFF IN ERROR,

vs.

ELEANOR M. CHADWICK.

In Error to the Supreme Court of the District of Columbia.

BRIEF OF COUNSEL OF DEFENDANT IN ERROR.

This suit was instituted in the supreme court of the District of Columbia by Eleanor M. Chadwick against James Sykes, to recover the sum of $5,000, claimed to be due her on a promissory note, of which the following is a copy:

$5,000. WASHINGTON, *Oct.* 15, 1869.

Six months after date, we promise to pay to the order of Eleanor M. Chadwick, five thousand dollars, value received.

JAMES SYKES.
H. A. CHADWICK.

H. A. Chadwick is the husband of the defendant in error, and was so at the time of the making of said note.

The said Sykes and Chadwick were the owners of a piece of land, in the city of Washington, which they desired to sell to the Freedman's Saving and Trust Company, but were unable to effect a sale thereof without obtaining the assent

of the defendant in error, and in consideration of her joining in the execution of a deed to convey the said property to said company, they gave her the note sued on.

The plaintiff in error offered in evidence a deed of trust, signed by Sykes and Chadwick and their wives, to prove that Mrs. Chadwick parted with her right of dower, but the court refused to admit it as evidence, which is one of the errors imputed to the court.

I.

The suit was properly brought in the name of Mrs. Chadwick. The demurrer, (Record, p. 2,) and the first exception, (Record, p. 7,) are based upon the ground that Mrs. Chadwick, being a married woman, could not contract or sue in her own name in such a case as this.

The act of April 10th, 1869, (16 Stat. at L., p. 45,) is as follows:

Be it enacted, &c., That in the District of Columbia the right of any married woman to any property, personal or real, belonging to her at the time of her marriage, or acquired during marriage in any other way than by gift or conveyance from her husband, shall be as absolute as if she were *feme sole*, and shall not be subject to the disposal of her husband, nor liable for his debts; but such married woman may convey, devise, and bequeath the same, or any interest therein, in the same manner, and with like effect as if she were unmarried.

SEC. 2. *And be it further enacted*, That any married woman may contract and sue and be sued, in her own name, in all matters having relation to her sole and separate property, in the same manner as if she were unmarried; but neither her husband, nor his property, shall be bound by any such contract, nor liable for any recovery against her in any such suit; but judgment may be enforced by execution against her sole and separate property, as if she were sole."

The note in question was drawn payable to Mrs. Chadwick alone, and was her sole property. Even under the old

rules of the common law such a chose in action coming to her during coverture would be hers till reduced to possession by her husband, and when her capacity to sue was restored by the termination of the life of her husband, she alone could sue.

Fisk *vs.* Cushman, 6 Cushing, 20.
1 Parsons, N. & B., 87.
Draper *vs.* Jackson, 16 Mass., 480.
Hayward *vs.* Hayward, 20 Pick., 517.
Phelps *vs.* Phelps, 20 Pick., 556.

But the statute cited takes away the right of the husband to reduce the chose in action to possession, and confers upon the wife the right to sue during coverture. So Mrs. Chadwick stands, with reference to this note, just as she would if her husband had died without reducing it to possession.

The joining of Chadwick in the execution of the note to his wife may or may not have given rise to an obligation on his part to pay it. If the statute above cited authorizes the wife to contract with and sue her husband, he would be liable, and Mrs. C. might have sued both of the joint makers, or, under the 20th section of the act of February 22d, 1867, (14 Statute at Large, p. 405,) she might elect, as she did, to sue Sykes alone. If, on the other hand, she could not so contract and sue, his signature would be of no validity, and the note would be held to be the note of James Sykes alone.

Lingate vs Lingate 2 J. Mould. 53 Millington vs Allen 11 Pet 574

By the common law the effect of such a signature by the husband was to indicate the consent of the husband to the contract of the wife, and if the wife survived she could bring her action against the other maker and recover.

Richards *vs.* Richard, 2 Barn. & Ad., 447.
Phelps *vs.* Phelps, 20 Pick., 559.
1 Parsons on N. & B., 89.
Poor *vs.* Hazelton, 15 New Hamp., 564.

Burgess vs Merrill, 4 Saund 468
Chandler vs Parks, 3 Esp. 77
Jaffray vs Frebain, 5 do 47
Harrington vs Thomson, 9 Gray, 65
Lenthall vs May, 1 B. Monroe
Stevens vs Beals, 11 Cush. 291

II.

The note is not void from want or failure of consideration.

The 2d, 3d, and 4th exceptions (Record, pp. 7 and 11) proceed on the hypothesis that there was no consideration for the note sued on, and none issuing out of the sole and separate property of Mrs. Chadwick.

The law presumes a consideration for a promissory note, and the burden of proof is on the maker to establish the contrary.

Jennison *vs.* Stafford, 1 Cushing, 170.
Story on Notes, § 181.
Bailey *vs.* Cromwell, 3 Scam., 71.

There is no evidence to rebut this presumption. It is in proof that the note was given to Mrs. C., in consideration of her signing the deed set out on page 5 of the Record. This she did. The consideration of the note was received by the plaintiff in error just as he demanded it. There is no pretence of fraud, or surprise, or mistake. They got what they contracted for, and *all* they contracted for. They may have overestimated the value of Mrs. C.'s signature, but all the *facts* were before them, and were undisputed. Admit that they were mistaken in supposing that Mrs. C., retained an interest in the property conveyed after executing the deed of trust offered in evidence, and very properly rejected by the court below. This was a misapprehension of the *law*, and their ignorance will not excuse them. The mere *inadequacy* of the consideration will not authorize a court to avoid a contract, especially where there is no intimation of fraud or deception in obtaining its execution, as in this case.

Hubbard *vs.* Coolidge, 1 Metc., 84.
Sanborn *vs.* French, 2 Foster, (N. H.,) 246.
Lord Ellenborough in Phillips *vs.* Bateman, 16 East., 372.
1 Parsons on N. & B., 205, and cases cited.
Solomon *vs.* Turner, 1 Starkie, 51.

1 Parsons on Cont. 8 St. 14
1 Parsons on Cont. 8 St. 14
Skeate vs Beale, 11 Ad & El 983

From these authorities, it appears that even if the plaintiff in error was mistaken in attributing a value to the execution of the deed by Mrs. Chadwick, he would not be relieved from his liability on his note; but, in fact, the release of her dower did deprive Mrs. Chadwick of a valuable right. It has been expressly held by this court in the case of Bank of United States *vs.* Lee, 13 Pet., 107, that the release of dower is a good consideration for a deed from the husband to trustees for the benefit of the wife. Admitting, for the sake of the argument, that, under the laws of the District of Columbia, a wife has no right of dower in an equity of redemption, nevertheless she has a contingent interest therein, and her right would revive immediately upon the release of the deed of trust offered in evidence, and, therefore, her execution of the deed to the Freedman's Saving and Trust Company operated to deprive her of that contingent interest in the property.

The plaintiff in error still retains the benefits of the signature of Mrs. Chadwick in consideration of which he gave this note, and he makes no offer to place her in the same situation in which she was before that signature.

Nor can it be contended that the consideration of this note proceeded from the husband of Mrs. Chadwick; her dower interest devolved upon her by operation of law, nor could her husband have deprived her of it; she alone could bar her right.

And lastly, it is entirely immaterial, in this action, whether the consideration for this note moved from Mrs. C. or not; the note was made to her in her own name, and by that fact became her sole and separate property. Even if the consideration had moved directly from her husband, her right to the note would have been complete against all the world, except the creditors of her husband. It would have been liable for his debts just as property conveyed by him to trustees, for her sole and separate use, before the married

women's act took effect, would have been liable, but her title was perfect against all the rest of the world. (1 Parsons on N. & B., p. 88, notes.)

A. G. RIDDLE,
C. M. HAWLEY,
FRANCIS MILLER,
For Defendant in Error.

ADDENDUM.

First. The relinquishment of the dower interest by the defendant in error to the plaintiff in error for said promissory note, was a valuable and legal consideration.

The accomplishment of the sale of the land mentioned in the said deed, on page 5 of the printed record, depended, as is shown by the evidence upon the fact, whether or not the defendant in error (who is and was the wife of the said Henry A. Chadwick) would unite with James Sykes, the plaintiff in error, and her said husband, in the said deed of conveyance to the "Freedman's Saving and Trust Company," and thereby release her contingent dower interest therein.

She was not obliged to do this. By doing it she performed an affirmative act, a valuable service that was necessary to be done, or the sale must fall through. The circumstance that her dower interest was contingent upon her surviving her husband, in no way diminished this interest, nor would any other mere contingency destroy this interest, which interest was very great when we remember that the value placed upon the property sold by the parties was $80,000.

In the property so sold, the plaintiff in error had a half interest as a tenant in common with Henry A. Chadwick, and when he came to transfer the same to the purchaser, he found he could not give a complete title to the same without securing the relinquishment of the dower interest of the defendant in error therein. This the purchaser also required before he would conclude the purchase; and without compensation this she refused to do. The plaintiff in error then proposed to her that if she would join him with her husband in the deed of conveyance of the land, and relinquish to the "Freedman's Savings and Trust Company" her dower interest therein, he would obligate himself to pay her in consideration thereof $5,000. She accepted his offer, and executed with them the deed, and relinquished her dower interest therein, and received in consideration thereof the said promissory note of the plaintiff in error, in the sum of $5,000, which this suit was brought to recover.

+ Hall vs Hall, 2 McCord Ch 269

By this transaction she did for him what she was not obliged to do, and parted with an interest that was of great value to her, and a great benefit and value to him. Under the act of Congress of April 10, 1869, she had the right to do this in her own name and for her exclusive benefit, independent of her husband; and under this act she had the further right to control the same, precisely in the same manner as though she was a *feme sole*. Even under the common law her husband could not claim or control the said promissory note of $5,000, until he had reduced it to his possession. But under the said act of Congress, (see 16 U. S. Statute-at-Large, p. 45, ch. 23,) she not only had the right to make the contract for the same, but to receive and control it, and enforce its collection in her own name, the same as though she was a *feme sole*.

Under a similar statute of Illinois, pased in 1861, giving to married women the absolute control of their individual property, (but which is unlike the act of Congress of April 10, 1869, in this it does not, *in terms*, give to the wife the right of suing and being sued in her own individual name,) the supreme court of that State held, in an action of replevin by the wife, that, "*under the statute, the rights of the wife alone are affected; and, on the well-established principles of the law, she alone must bring suit for an invasion of them. She must be considered as a feme sole in regard to her estate of every sort owned by her.*" (See Emerson *vs.* Clayton, 32 Ills. R., 495-6-7; also Rose *vs.* Sanderson, 38 do., 347; Manny *vs.* Rixford, 44 do., 132; Cole *vs.* Van Riper, 44 do., 67.)

Second. The dower interest of the defendant in error in the said land conveyed to the "Freedman's Savings and Trust Company," came to her by operation of law, and not "*by gift or conveyance from her husband*," specified in the inhibiting clause of the act of Congress of April 10, 1869.

This point was decided and settled by the supreme court of Illinois in a case of personal injuries received by a wife on a railroad, as follows: "The right of action (says the court) accruing by reason of personal injuries received by a married woman from the negligence of a railroad company, is property, and coming to her from a source other than her husband, and in good faith, it is her separate property, and comes under the Illinois act of 1861; and she may sue alone for such injuries; and the husband cannot, without her con-

sent, adjust it or release it." (See Chicago B. & Q. R. R. Co. *vs.* Dunn, 52 Ills. R., 263.)

In other cases, the same court held that "the rule in construing remedial statutes in derogation of the common law, is that everything is to be done in advancement of the remedy that can be done consistently with any fair construction that can be placed upon it;" and then the court reiterates the rule as laid down in the case of Emerson *vs.* Clayton, 32 Ills. R., 495. (See *ib.*, 52 Ills. R., page 263.)

In the case of the United States Bank *vs.* Mrs. Lee *et al.*, (13 Pet., 110,) this court held that a deed of conveyance of slaves and other property by a husband to his wife in consideration of her release of her right of dower in certain lands of her husband in compliance with an agreement made with him, was a valid contract, and that she cannot be deprived of the slaves and other property so received without restoring to her her rights in the land so released. (See p. 116, or 13 Curtis, p. 75.)

Third. The defendant in error had the right to sue the plaintiff in error, without joining Henry A. Chadwick with him as defendant, under the act of Congress of the 22d of February, 1867, which is as follows:

"SEC. 20. *And be it further enacted*, That where money is payable by two or more persons jointly or severally, as by joint obligors, covenantors, makers, drawers, or indorsers, one action may be sustained and judgment recovered against all *or any of said parties, by whom the money is payable, at the option of the plaintiff.* But an action against one or some of the parties by whom the money is payable, may, while the litigation therein continues, be pleaded in bar of another action against another or others of said parties." (See 14 United States Statutes at Large, pages 405–6.")

The signature of H. A. Chadwick to said note, so far as this suit is concerned, is of no consequence under this statute. The plaintiff in error stands in his relation to the note, and to the defendant in error, as though he had made and executed the same alone.

If the plaintiff in error, by virtue of any agreement with Henry A. Chadwick, has a claim against him, he must look to him alone for that, for that is a matter exclusively between them.

Fourth. The copy of the alleged deed of trust offered in evi-

dence, found on pages from seven to eleven inclusive of the printed record, was not proper or competent evidence, even if the original (if there was such) was proper evidence in the case, for it was not the best evidence of the alleged conveyance on the part of the defendant in error of her right of dower; and the plaintiff in error did not lay a foundation to prove this, by copy. This rule is inflexible. (See 1 Greenleaf Ev., secs. 82–86, 87.)

But suppose, for the sake of the argument, we admit that the defendant in error duly released her rights of dower in the said land, by virtue of a trust or mortgage deed for the security of a debt, it was but a conditional release, and was only for the benefit of the *cestui que trust*, or mortgagee and his assigns, and was subject, by the terms of the conveyance, to be defeated by its payment; and suppose her husband had died the next day after such release of her dower interest, to secure a debt that had a year to run, it is manifest in such case she would have a valuable dower interest in a property worth $80,000; and even if the property was actually sold under the mortgage, then, by the modified rules of the common law of the United States, she would have an equity of redemption of her dower interest by paying to the mortgagee, or his assigns, her *pro rata* share of the debt so secured. But before citing the authorities to sustain this position, we will remark that there is a difference between a dower interest and an absolute right of dower. The first may be contingent, and not abide longer than a month, or a year, or a term of years, or any less term, or until the mortgage is duly foreclosed. The other is for life. The first may depend in the extent of its duration upon the payment or non-payment of the debt so secured; while the other depends only upon the death of the husband.

It may be conceded that by the common law of England the wife, when she joins with her husband in executing a mortgage upon his real estate, and thereby relinquishes to the mortgagee and his assigns her right of dower, she has no right in the equity of redemption of the same, after the debt is due, or after the mortgage has been foreclosed. But before the debt becomes due, and before the mortgage is foreclosed, she must have a dower interest in the mortgaged estate; for when the debt is paid, the mortgaged property, by the terms of the mortgage, is free, and her dower interest

at once becomes a right of dower. (See Powell's Analysis of American Law, page 147, sec. 26.)

It will be borne in mind that the question now before the court, on this question of dower, is not, whether Mrs. Chadwick had at the time the right to demand her dower, but did she have a dower interest in the land sold and conveyed by her husband and Sykes sufficient to constitute a valuable consideration in law for the note she received of the plaintiff in error?

Upon the assumption that she executed the mortgage deed, a copy of which was offered in evidence, then, and in that case, her relinquishment of her dower interest in the land conveyed to the "Freedman's Savings and Trust Company," was not, nor can it, under the circumstances, be presumed *to be proffered on her part.* She must be presumed to have worked for a consideration, for she performed a *bona fide* service for the plaintiff in error, at his request, for a valuable consideration, and thereby enabled him to sell property owned by him and her husband as tenants in common for $80,000. Her contingent dower interest therein, (if indeed it was but that,) so relinquished, was a valuable consideration in law, and sufficient to give validity to the promissory note sued upon. ✗

Fifth. There was and is redemption from all mortgage securities under the law, which could be foreclosed only in equity. 1 Scribner on Dower, 570

By the statute of Maryland of 1784, which is now in force in the District of Columbia, all mortgagees were obliged to foreclose, in chancery, the equity of redemption, as follows: "That if the mortgagor, his heirs," &c., "shall not pay the principal money and interest," &c., "the court of chancery may and shall, as speedily as the case will permit, foreclose such mortgagor, his heirs, executors, administrators, and assigns, of their equity of redemption in the mortgaged premises, and order and direct a sale thereof, or of such part thereof as may be necessary to raise and satisfy all the principal and interest due, with costs, *and if any part of the mortgaged premises remains unsold, by order to reinstate the mortgagor, or persons entitled under him, whose former legal estate shall be restored by virtue of such order and this act.*" (See Maryland Stat. of 1784, ch. 58, sec. 3.) This is manifestly an invasion of the old common law rule upon the question of the right of dower; *for the mortgagee must go*

+ 2 Scrib. on Dow. 289
Taylor vs Fowler, 18 Ohio 567
Gore vs Gaither, 23 Ill. 634, 640-1

into chancery to foreclose the equity of redemption of the mortgagor, his heirs, &c., and if any part of the mortgaged estate remained, after payment of debt and costs, the mortgagor, and all claiming under him, were, by the order of court and the act, restored or reinstated. This certainly covers the right of dower in the wife of the mortgagor, and shows most conclusively that the defendant in error, even if she had released her right of dower, as claimed under this statute, had at least a dower interest, if not an absolute right of dower in the premises said to be mortgaged. What say the authorities on this view of this question.

Chancellor Kent in his Commentaries (8th Ed.) says: "In the United States, the equity of the wife's claim has met with a more gracious reception; and in Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Tennessee, Alabama, Mississippi, Indiana, and probably in most or all of the other States, the wife is held dowable of an equity of redemption existing at the death of her husband. Though the wife joins with her husband in the mortgage, and though the husband should afterwards release the equity, the wife will be entitled at his death to her dower in the lands subject to the mortgage; and if they are sold under the mortgage, then to her claim as for dower in the surplus proceeds, if any there should be." (See 4 Kent Com., pp. 44, 45.) This language or doctrine is a just construction of the Maryland statute above quoted.

The Chancellor says again: "The reason of the American rule giving dower in equities of redemption is, that the mortgagor, so long as the mortgagee does not exert his right of entry or foreclose, is regarded as being legally, as well as equitably, seised in respect to all the world but the mortgagee and his assigns. Even in the view of the English courts of equity, the owner of the equity of redemption is the owner of the land, and the mortgage is regarded as personal assets. The rule in several of the States is carried to the extent of giving to the wife her dower in all trust estates. That is said to be law in New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, Mississippi, Ohio, Illinois, and Alabama; but the rule in those States must be understood to be limited to the case of trusts in which the husband took a beneficial interest." (*Ibid.*, pp. 45, 46; see also p. 47.)

Again the Chancellor says: "A mortgage, before fore-

closure, is regarded by the courts in this country for most purposes as a chattel interest." (*Ibid.*, 47.)

In New York, where the husband had mortgaged his estate, it was held: "It is now the settled law in this court, and the same principle has been recognized in the court for the correction of errors, that the mortgagor is to be deemed seised, notwithstanding the mortgage, as to all persons except the mortgagee and his representatives, when his interest is not in question, the mortgagor before foreclosure or entry under the mortgage, is now considered, at law, as the owner of the land. The same principle ought, perhaps, equally to stop him from setting up an existing mortgage, because we now regard the mortgaged estate only for the benefit of the mortgagee and his assigns. As to the rest of the world, so long as it is not put in force, it is only a pledge or lien on the land, with which they have no concern any further than not to disturb it." (Hitchcock *vs.* Harrington, 7 John R., 291, 294, '5. See also Collins *vs.* Torrey, 7 John R., 278.) And so it was held in New York where the husband executed a mortgage in which the wife joined, and after which he released his right of redemption therein, that the wife "was no party to that release, and her right of dower in the equity of redemption could not therefore be effected by it." (Swaine *vs.* Perine, 5 John Ch. R., pp. 490–1; Jackson *vs.* Dewitt, 6 Cowen R., 317; Mantz *vs.* Buchannan 1 Maryland Ch., 203, 205–6; Cass *vs.* Martin, 6 New Hampshire, 25; Bullard *vs.* Bowers, 10 N. H., 502, and the cases therein cited.) The Massachusetts authorities are to the same import, and if possible stronger. (See Henry's case, 4 Cush., 257, 259; Gibson *vs.* Crehore, 5 Pick, 145, 148, 151; Van Vronker *vs.* Eastman, 7 Metcalf, 157, opinion on page 161; Niles *vs.* Nye, 13 Met., 137; Barker *vs.* Parker, 17 Mass., 564–5. See also Dunham *vs.* Osborn, 1 Page Ch., 634; Law Reporter for 1849, Vol. 2, page 165; Smith *vs.* Eustis, 7 Greenleaf's R., 41; also Powell's Analysis of American Law, p. 147, sec. 26.)

The case of Stelle *vs.* Carroll, 12 Pet., 203, in no way affects the principle we contend for. In this case Pontius D. Stelle executed a mortgage to Tunnicliffe, which was afterwards redeemed. The second was made by Stelle and wife to Miller, in which she released in due form her right of dower. Afterwards her husband released to Miller his right of redemption, and thereby the mortgaged property became

absolute in him and his assigns, and the court held that under these facts the wife had lost her rights of dower. In the case of Maburry *vs.* Brien, 15 *Ibid.*, 35, the court held that the estate in question was conveyed in *joint tenancy*, and was not *a tenancy or an estate in common.* (See page 13.) And then the court adds, "on joint tenancy at common law, dower does not attach." And, besides, the court found that, "At the time the deed to the Maburrys for this property was executed by executors, a mortgage on the property was given by the Maburrys to secure the payment of a large portion of the purchase money, and the deed and the mortgage were delivered at the same time." Here was only a momentory seising, and of course the dower did not attach against this mortgage. This is all this case could or did decide.

At common law, says Cruise on Real Property, "a woman is dowable of a *qualified fee* as long as it continues. It is the same as a *base fee.*" See 1 Greenleaf's Cruise on Real Property, page 184, sec 6, and he adds, "where lands are mortgaged for a term of years only, a woman will be entitled to dower out of the equity of redemption, *ibid*, page 185, sec. 10; and Mr. Greenleaf, in a note on the same page, says, in most, if not all of the United States, the legal estate is regarded as still in the mortgagor, as to all persons except the mortgagee and his assigns; and therefore the wife is held dowable *at law* against all persons claiming under the husband, except those claiming under a mortgage deed made prior to marriage; and this, whether the mortgage was for years or in fee. And against such prior mortgagee and his assigns, she is dowable in equity. And though she joined with her husband in a subsequent mortgage releasing her claim of dower, yet this release enures to the benefit of the mortgagee and his assigns only, and not to a stranger." (See also Smith *vs.* Euistice, 7 Greenleaf R., 41.)

This rule is a just one; and inasmuch as it is enforced by all the States in the Union; and inasmuch as we have a common law of the United States acknowledged by our courts; and inasmuch as this rule has in fact become a part of the common law of the United States, it seems desirable that it should be recognized by this high court as such.

Sixth. And besides, dower may be released to the owner of the fee, or to a person in privity with the estate who can-

not assert the dower-right against the owner of the fee. (See Chicago Dock Company *vs.* Kinzie, 49 Ill. R., page 289–295.

Seventh. The contract between the plaintiff and defendant in error, by which the defendant in error conveyed and released her dower interest in the land mentioned in said deed, at his request, and received from the plaintiff in error in consideration therefor the said promissory note of $5,000, is an executed contract between them, from which there is no recision, unless it is tainted by actual fraud on his or her part. (See Beebe *vs.* Swartwout, 3 Gillman, 162.) A party cannot rescind a contract of sale and at the same time retain the consideration he has received, as the plaintiff in error is seeking to do. He must return the property he obtained to the vendor in as good condition as when he received it, or its benefits. It cannot be affirmed in part for his benefit and rescinded in part against her rights. (See Buchanan *vs.* Harney, 12 Ills. R. 336; Jennings *vs.* Gage, 13 *ibid*, 610; Bowen *vs.* Schuler, 41 *ibid*, 193; Ryan *vs.* Brant, 42 *ibid.*, 78; King *vs.* Mason, 42 *ibid.*, 223; Peoria M. & F. In. Co. *vs.* Botto, 47 *ibid.*, 516.)

But the said alleged mortgage or trust deed was not offered in evidence; only an alleged copy was offered, (see Record, pages 7 and 11;) and it could not be proved by copy, unless a proper foundation was laid to so prove it; and no such foundation was laid; therefore, the copy offered was properly ruled out by the court below. If the original was admissable, there was no evidence to show that it was a subsisting lien upon the premises sold to the "Freedman's Savings and Trust Company."

Besides, the note sued on is *prima facie* evidence of consideration and there is no evidence in the record to overthrow this conclusion of law.

Bailey *vs.* Cromwell, 3 Scam., 71.
Hill *vs.* Todd, 29 Ills. R., 101.
Hoyt *vs.* Jaffray, 29 Ills. R., 104.

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